APPEAL NO. 022517
FILED NOVEMBER 4, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on August 28, 2002. The hearing officer resolved the sole disputed issue by deciding that the appellant's (claimant) compensable injury of _____, extended to and included gastritis, secondary to medication for the compensable injury, but did not extend to and include a right knee meniscus tear, a neck sprain/strain, or a right shoulder S.L.A.P. lesion with an impingement syndrome. The claimant appealed on sufficiency grounds and the responded (carrier) responded, urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's compensable injury of _____, extended to and included gastritis, secondary to medication for the compensable injury, but did not extend to and include a right knee meniscus tear, a neck sprain/strain, or a right shoulder S.L.A.P. lesion with an impingement syndrome. The claimant did not testify at the CCH, but presented medical records, as did the carrier. In argument, the ombudsman claimed that the medical records reflect the additional injuries alleged. The carrier's counsel argued that the body parts where the claimant has newly claimed an injury were not a part of the original compensable injury, and that it is evident from the medical records that the claimant's newly alleged injuries were diagnosed years after the compensable injury. The hearing officer agreed with the carrier's arguments, except as to the gastritis, finding that it was a result of the pain medications prescribed for the compensable injury, and thus compensable.

Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so

contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust and we do not find it to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **ASSOCIATION CASUALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

HAROLD FISHER, PRESIDENT
3420 EXECUTIVE CENTER DRIVE, SUITE 200
AUSTIN, TEXAS 78731.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Michael B. McShane
Appeals Judge

_____
Margaret L. Turner
Appeals Judge